

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
International Business Reply Service Competitive
Contract 3 (MC2011-21)
Negotiated Service Agreement

Docket No. CP2012-54

ORDER ADDING CONTRACT TO INTERNATIONAL BUSINESS
REPLY SERVICE COMPETITIVE CONTRACT 3 PRODUCT

(Issued September 13, 2012)

I. INTRODUCTION

On August 29, 2012, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, stating that it has entered into an additional International Business Reply Service (IBRS) 3 contract.¹ The Postal Service requests that the instant contract be included within the IBRS Competitive Contract 3 product. *Id.* at 3. For the reasons discussed below, the Commission approves the request.

¹ Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, August 29, 2012 (Notice). The Postal Service filed a redacted version of the instant contract as an attachment to the Notice. It also filed an unredacted version under seal.

II. POSTAL SERVICE'S NOTICE

The Postal Service identifies the instant contract as the successor to the contract the Commission approved for inclusion within the IBRS Competitive Contract 3 product in Docket No. CP2011-70. *Id.* The Postal Service intends for the instant contract to take effect September 15, 2012, the day after the Docket No. CP2011-70 contract expires. The instant contract terminates 1 calendar year after the effective date, unless terminated earlier by either party upon 30 days' written notice. *Id.* Attachment 1 at 4.

The Postal Service asserts that the instant IBRS contract fits within the Mail Classification Schedule (MCS) language for IBRS contracts appearing in Attachment A to Governors' Decision No. 08-24. *Id.* at 3-4. The Postal Service states that Governors' Decision No. 08-24 established a pricing formula and classification which ensure (1) that each IBRS contract meets the criteria of 39 U.S.C. § 3633 and related regulations, and (2) that costs conform to a common description. *Id.* It asserts that the instant contract meets the Governors' Decision No. 08-24 criteria and thus, exhibits cost and market characteristics similar to previous IBRS contracts. *Id.*

The Postal Service asserts that the instant contract is functionally equivalent to the IBRS 3 baseline contract, notwithstanding some of the contracts' provisions may vary, *e.g.*, (1) a revised sentence in Article 15 stating that the Postal Service may be required to file information in connection with the contract (including, costs, volumes, or revenues) in other Commission dockets; and (2) an additional Article 30 concerning intellectual property, co-branding, and licensing. *Id.* at 5-6. The Postal Service asserts that the differences affect neither the fundamental service that it is offering nor the fundamental structure of the contract. *Id.* at 6.

The Postal Service states that prices offered under this IBRS contract may differ from previous IBRS contracts due to factors such as volume or postage commitments, but it claims these differences do not alter the contract's functional equivalency with the IBRS 3 baseline agreement. *Id.* Instead, the Postal Service asserts that because the instant agreement incorporates the same cost attributes and methodology as the IBRS

3 baseline agreement, its relevant characteristics are similar to, if not the same as, the IBRS baseline agreement. *Id.*

The Postal Service asserts that based on the reasons discussed in its Notice and as demonstrated by the supporting financial data, it has established that the instant contract is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to the IBRS 3 baseline agreement filed in Docket Nos. MC2011-21 and CP2011-59. *Id.* It therefore states that the contract should be included within the IBRS Competitive Contract 3 (MC2011-21) product. *Id.*

III. COMMENTS

Comments were filed by the Public Representative.² No other comments were received.

The Public Representative concludes that the instant contract is functionally equivalent to the IBRS 3 baseline contract. *Id.* at 2. He also states that it appears the negotiated prices should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. *Id.* at 2. With respect to the question of functional equivalence, the Public Representative agrees with the Postal Service that the revision to Article 15 and the addition of Article 30 do not affect the fundamental service the Postal Service is offering or the fundamental structure of the agreement. *Id.* at 3. He therefore concludes that the instant contract is functionally equivalent to the baseline agreement. *Id.*

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to determine whether the instant contract: (1) is functionally equivalent to the IBRS 3 baseline contract; and

² Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, September 6, 2012.

(2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 CFR 3015.5 and 3015.7).

The Commission's assessment of the functional equivalence of the instant contract to the IBRS 3 baseline contract leads it to conclude that the two contracts share similar costs and market characteristics. The revision to Article 15 and the addition of Article 30 are minor differences that do not fundamentally alter either the service the Postal Service will provide under the contract or the structure of the contract.

Cost considerations. The Commission reviews competitive products to ensure they meet the applicable requirements of 39 CFR 3015.5 and 3015.7, as well as 39 U.S.C. § 3633. The Commission has reviewed the financial analyses underlying the instant contract and the PR Comments. Based on the information provided, the Commission finds the contract submitted should cover its attributable costs (39 U.S.C. § 3633(a)(2)), not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)), and have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. § 3633(a)(3)). Thus, a preliminary review of the proposed contract indicates that it comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633.

Other considerations. The Postal Service identifies September 15, 2012 as the effective date of the instant contract, and states that it will expire at the end of 1 calendar year. The Postal Service shall notify the Commission if the instant contract terminates earlier than scheduled.

The Commission notes that the instant contract, like previous IBRS competitive contracts, contains clauses addressing cost increases and contingent pricing which allow the Postal Service flexibility to change rates without entering into a new agreement. The Commission addressed the implications of contingency pricing clauses in Order No. 178 (in Docket No. CP2009-20) and concluded that the Postal Service

must file notice of rate changes occurring under such clauses pursuant to 39 CFR 3015.5 procedures and provide a minimum of 15 days' notice.³

Conclusion. The Commission finds that the contract submitted in this docket is appropriately included within the IBRS Competitive Contract 3 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The contract submitted in Docket No. CP2012-54 is included within the International Business Reply Service Competitive Contract 3 product.
2. The Postal Service shall notify the Commission if the instant contract terminates earlier than scheduled.
3. The Postal Service shall file any modifications of price based on cost increases or contingency price provisions in the instant contract with the Commission as discussed in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary

³ Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, at 9-10, February 5, 2009 (Order No. 178). The Commission also stated that it did not anticipate that there would be a need for further action unless new issues (other than rate changes) were involved. *Id.* at 9.